

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 17, 2010 appellant, a 56-year-old motor equipment operator, injured his right hip and low back when he was struck by a motor vehicle. He filed a claim for benefits, which OWCP accepted for right hip contusion. Appellant stopped working on February 18, 2010 and OWCP paid wage-loss compensation.

In a Form CA-20 report dated March 1, 2010, Dr. Shiush-Chau Wang, a Board-certified family practitioner, listed that he examined appellant on February 18, 2010 for lower back pain and spasms. He checked a box indicating that the condition found was caused or aggravated by employment activity.

In a Form CA-20 report dated March 24, 2010, Dr. Dmitriy Grinshpun, a specialist in neurology, stated that appellant showed lower back tenderness on examination. He diagnosed lumbago and checked a box indicating that the condition found was caused or aggravated by employment activity.

On April 2, 2010 appellant underwent a magnetic resonance imaging (MRI) scan of the lumbosacral spine which showed normal alignment and curvature of the lumbar spine and no compression fractures. The study indicated hypertrophic changes of the ligaments and degenerative facet joint changes at L4-5 with no significant narrowing of the canal, lateral recesses and mild narrowing of the neural foramen bilaterally. The MRI scan demonstrated degenerative facet joint changes at L5-S1 with no significant disc bulge or protrusion, no significant narrowing of the canal or lateral recesses and mild narrowing of the neural foramen, bilaterally, from the degenerative changes at the facet joints. Appellant also had degenerative changes of the lumbar spine, most severe at L4-5 and L5-S1.

On April 23, 2010 appellant stated that, although he initially had pain mostly in the right hip as a result of the February 17, 2010 work incident, he gradually began to experience pain in his lower back. The pain resulted in numbness which radiated from just above his left knee to the left side of his lower back.

In a June 30, 2010 Form CA-20 report, Dr. Grinshpun stated that appellant had lower back pain radiating down his left leg. He referred appellant to a pain management specialist and checked a box indicating that the condition found was caused or aggravated by employment activity.

In a March 24, 2010 report, received by OWCP on August 19, 2011, Dr. Vladimir Tress, an orthopedic specialist, stated that appellant had complaints of lower back pain and spasms stemming from a work incident in which he was hit. He experienced back pain with numbness radiating to the left side of his back and left leg. Dr. Tress diagnosed lumbago.

Appellant underwent x-ray testing of his lumbar spine on March 10, 2010. The x-ray report showed no evidence of fracture or subluxation, with evidence of moderate sclerosis involving the facets of the L3 through L5 vertebral bodies consistent with degenerative change.

A lumbar x-ray dated June 5, 2010 found no fracture or dislocation, no significant bony abnormality and no degenerative changes.

In an August 12, 2010 report, Dr. Aaron Sporn, a Board-certified orthopedic surgeon, stated that appellant had persistent complaints of symptoms in the left hip. He advised that, by comparison, the right hip showed excellent motion in all directions with no abnormalities to explain his symptoms. Dr. Sporn recommended that appellant continue with physical therapy.

In order to determine appellant's current condition and residuals from his accepted injury, OWCP referred appellant for a second opinion examination to Dr. Robert J. Orlandi, Board-certified in orthopedic surgery. In an October 20, 2010 report, Dr. Orlandi reviewed the medical history and the statement of accepted facts and listed findings on examination. Appellant related that he was struck in the left side by a tractor on February 17, 2010 which resulted in an injury to his left hip. This conflicted with the statement of accepted facts, which indicated that he had actually sustained a right hip contusion on February 17, 2010. Dr. Orlandi concluded that appellant currently had no musculoskeletal disability and could return to work without restrictions. He advised that appellant had a left hip contusion which was causally related to his February 17, 2010 employment injury, which had resolved.² Dr. Orlandi found that appellant had a normal lumbar examination. He asserted that appellant had reached maximum improvement and there was no further need for diagnostic testing or surgery.

In a report dated November 8, 2010, Dr. Paul Ackerman, a specialist in orthopedic surgery, stated that appellant continued to have pain in his back which radiated toward the left hip. On examination, he had tenderness over the left hip in the area of the greater trochanter, in addition to low back pain. Appellant walked with a slight limp. Dr. Ackerman recommended continued physical therapy and pain management. He opined that, based on his examination, appellant was not able to work.

In reports dated January 10 and February 22, 2011, Dr. Ackerman reiterated his previous findings. In a February 22, 2011 report, he noted that appellant had continued pain in his lower back and diagnosed degenerative arthritis of the lumbosacral spine.

On March 10, 2011 OWCP issued a notice of proposed termination of compensation. It found that the weight of the medical evidence was represented by the opinion of Dr. Orlandi, the second opinion physician. OWCP established that the accepted right hip contusion had resolved and that appellant had no residuals from the February 17, 2010 work injury. It noted that, although the claim was accepted for a right hip contusion, appellant had no complaints or issues relating to the right hip. OWCP further stated that the degenerative changes to appellant's lumbar spine, as noted by MRI scan, were not related to the February 17, 2010 work injury. It allowed appellant 30 days to submit additional evidence or legal argument in response to the proposed termination. Appellant did not submit any additional medical evidence.

By decision dated April 13, 2011, OWCP terminated appellant's compensation, finding that Dr. Orlandi's referral opinion represented the weight of the medical evidence. Although Dr. Ackerman treated him for low back pain and diagnosed degenerative arthritis of the lumbosacral spine, OWCP had not accepted a left hip, back or other spinal condition.

² The Board notes that, although appellant stated in the February 17, 2010 Form CA-1 that he was struck in the right hip and OWCP accepted a right hip contusion, he provided a history of left hip contusion and reported complaints of left hip pain in most of the medical reports of record.

On April 20, 2011 appellant, through his attorney, requested an oral hearing.

In a May 9, 2011 report, Dr. Ackerman stated that appellant's lower back symptoms had significantly improved. While he still had discomfort, he felt well enough to go back to work intermittently. Dr. Ackerman noted no tenderness over the lumbosacral region on examination, though he showed limited flexion of the lumbar spine. He diagnosed degenerative arthritis of the lumbosacral spine and released appellant to return to work without restrictions.

By decision dated October 31, 2011, OWCP's hearing representative affirmed the April 13, 2011 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without either establishing that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

ANALYSIS -- ISSUE 1

Appellant's February 17, 2010 claim was accepted for a contusion of the right hip. On April 23, 2010 he explained that he initially had right hip pain following the accepted injury but experienced low back pain which radiated to his left knee. On August 12, 2010 appellant's treating physician, Dr. Sporn, reported that appellant currently had symptoms in the left hip, but that his right hip showed excellent motion and no abnormalities.

OWCP referred appellant to Dr. Orlandi for a second opinion evaluation, to determine whether appellant still had residuals of the accepted condition.

In an October 20, 2010 report, Dr. Orlandi stated findings on examination and reviewed the medical history, as well as the statement of accepted facts. He noted that the statement of accepted facts reported that on February 17, 2010 appellant sustained a right hip contusion, a condition which was accepted by OWCP. Appellant, however, told Dr. Orlandi that he was struck in the left side by a tractor on February 17, 2010 which resulted in an injury to his left hip. Despite this inaccurate history, Dr. Orlandi found that appellant currently had no musculoskeletal disability of any kind involving the right hip and could work without restrictions. He asserted

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *E.J.*, 59 ECAB 695 (2008).

that appellant had reached maximum improvement and did not require any additional diagnostic testing or surgery.

The Board finds that Dr. Orlandi's referral opinion was probative and well rationalized and represented the weight of the medical evidence. The report was sufficient to establish that appellant's accepted condition, a right hip contusion, had resolved without disability. While appellant did not provide a proper factual background, stating that he had injured his left hip on February 17, 2010, he did not report any complaints of pain in his right hip during his examination. Dr. Orlandi was essentially normal except for his right hip complaints. He concluded that appellant had no musculoskeletal disability. Dr. Orlandi's conclusion was supported by the earlier report from Dr. Sporn, who found that appellant had no abnormality of the right hip as of August 12, 2010. OWCP met its burden of proof to establish that appellant no longer had residuals of the accepted condition, contusion of the right hip, as of April 13, 2011.

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminated appellant's compensation in its April 13, 2011 decision, the burden of proof shifted to appellant to establish continuing disability.⁷

ANALYSIS -- ISSUE 2

Regarding the issue of continuing disability, although Dr. Ackerson, one of appellant's treating physicians, submitted progress reports indicating that appellant was unable to work because of his back and left hip pain conditions which were not accepted as causally related to appellant's employment injury, following the termination of his compensation benefits, he reported that appellant had improved significantly. In his May 9, 2011 report, Dr. Ackerson indicated that appellant's low back condition had improved and he could return to work without restrictions. There is no evidence of record to substantiate that appellant was disabled following the termination of his compensation benefits. OWCP's hearing representative properly found that appellant had submitted no evidence sufficient to establish that he had continuing disability causally related to the accepted injury.

LEGAL PRECEDENT -- ISSUE 3

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,⁹ including that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.¹⁰ As part of his or her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal

⁷ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *J.P.*, 59 ECAB 178, (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

¹⁰ *G.T.*, 59 ECAB 447(2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

relationship.¹¹ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹³

ANALYSIS -- ISSUE 3

OWCP accepted appellant's claim for right hip contusion. Appellant alleges that he also sustained lower back, left leg and left hip conditions because of the February 17, 2010 employment incident. His burden is to establish that the identified employment incident caused these additional conditions. Causal relationship is a medical issue that can only be proven by rationalized medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence and, consequently, the Board finds that he has not established that he sustained any condition other than his accepted right hip contusion in the performance of duty on February 17, 2010 causally related to his employment.

Regarding appellant's alleged lower back condition, the Board finds that appellant has not submitted any rationalized medical evidence from any physician which provides a diagnosis of appellant's lower back condition and then causally relates that diagnosis to the slip and fall of February 17, 2010.¹⁴ The April 2, 2010 MRI scan showed that appellant had degenerative facet joint changes at L5-S1 and degenerative changes of the lumbar spine at L4-5 and L5-S1. However, the record contains no reports from a physician which attributed these findings to the February 17, 2010 employment injury. The medical evidence of record regarding appellant's lower back condition consists of reports from Drs. Wang, Grinshpun, Tress and Ackerman. This evidence has limited probative value on the issue of causal relationship because it lacks a rationalized opinion explaining how the identified employment incident caused the conditions diagnosed.¹⁵ The reports from Drs. Wang and Grinshpun did not describe the mechanism of injury and, furthermore, their opinions on causal relationship consists of a check mark on a form report, offering no medical explanation of their opinions.¹⁶ Dr. Tress diagnosed lumbago in his March 2, 2010 report and stated that appellant experienced lower back pain, numbness and

¹¹ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

¹² *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ *Robert Broome*, 55 ECAB 339, 342 (2004).

¹⁵ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *See Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

spasms, with pain and numbness radiating to the left side of his back, due to a work incident in which he was hit. Dr. Ackerman submitted reports dated November 8, 2010, January 10, February 22 and May 9, 2011 in which he diagnosed degenerative arthritis of the lumbosacral spine and indicated that appellant had continued pain in his lower back. Neither Dr. Tress nor Dr. Ackerman, however, provided a probative, rationalized medical opinion which related their findings and diagnoses to the February 17, 2010 employment injury. With regards to appellant's alleged left hip injury, Drs. Sporn, Orlandi and Ackerman all noted that appellant had complaints of left hip pain but did not attribute these complaints to the February 17, 2010 work injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁷ The fact that a condition manifests itself or worsens during a period of employment¹⁸ or that work activities produce symptoms revelatory of an underlying condition¹⁹ does not raise an inference of causal relationship between a claimed condition and employment factors. OWCP properly found that appellant's lower back and left hip symptoms were not causally related to the February 17, 2010 work injury.

CONCLUSION

Under the circumstances described above, the Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits and appellant has not established an employment-related continuing disability following the termination of his benefits. The Board finds that appellant has not established that he sustained lower back, left leg or left hip conditions on February 17, 2010 in the performance of duty causally related to his employment.

¹⁷ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁸ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁹ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the October 31, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board